

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 19-CI-453**

ALISON LUNDERGAN GRIMES

PLAINTIFF

v.

ORDER

DAMON THAYER, et al.

DEFENDANTS

This matter is before the Court on Plaintiff's Motion for Temporary Injunction. The parties appeared before the Court on Monday, May 13, 2019 to argue the matter. Having considered the arguments of counsel, and being otherwise sufficiently advised, the Court hereby **DENIES** the Motion for Temporary Injunction, for the reasons set forth below.

BACKGROUND

In her Verified Complaint for Declaration and Rights and Permanent Injunctive Relief, Plaintiff seeks a declaration that House Bill ("HB") 114 violates the Kentucky Constitution and is therefore invalid, as well as a permanent injunction enjoining enforcement of HB 114. That bill, titled "AN ACT relating to elections and declaring an emergency," amends KRS 117.025, which addresses the authority of the State Board of Elections ("Board"), to prohibit any member of the Board from accessing, modifying, or altering the roster of registered voters maintained by the Board. Among other things, it also removes the Secretary of State as Chair of the Board and relegates the Secretary of State to a nonvoting ex officio member of the Board. Many of these terms were originally set forth in Senate Bill ("SB") 34. However, SB 34 failed to pass the House Elections, Constitutional Amendments and Intergovernmental Affairs Committee. After SB 34

failed, HB 114 was amended to include much of SB 34's language. That version of HB 114 was signed into law by Governor Matthew G. Bevin on March 19, 2019.

Plaintiff argues that HB 114 seeks to reconstitute the State Board of Elections as an independent state agency in violation of the separation of powers doctrine set forth in Sections 27, 28, 29, and 91 of the Kentucky Constitution. Plaintiff also argues that, through the bill, the legislative branch impermissibly interferes with the work of the executive branch. More specifically, she argues that General Assembly effectively discharged her duties as chief election officer, an executive branch position, by relegating her to the position of a nonvoting ex officio member, again violating the separation of powers doctrine and Sections 27, 28, 29, and 91. She also argues that HB 114 is unconstitutionally vague in violation of the due process guarantees of Section 2; the title of the bill is not germane to the subject in violation of Section 51; and the bill does not detail the reasons for its emergency enactment, as required by Section 55.

Plaintiff now requests a Temporary Injunction to enjoin the enforcement of HB 114 pending resolution of this legislation. At the May 13, 2019 hearing, Plaintiff tendered affidavits to the Court, and the Court permitted Defendants to file counter-affidavits or otherwise object to Plaintiff's affidavits. Having now received those responses from Defendants, the Court rules as follows.

ANALYSIS

Kentucky Rule of Civil Procedure ("CR") 65.04 authorizes the Court to grant a temporary injunction

during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

As the Supreme Court of Kentucky has explained,

This rule has been construed as requiring the trial court to deny injunctive relief unless it finds (1) that the movant's position presents "a substantial question" on the underlying merits of the case, i.e. that there is a substantial possibility that the movant will ultimately prevail; (2) that the movant's remedy will be irreparably impaired absent the extraordinary relief; and (3) that an injunction will not be inequitable, i.e. will not unduly harm other parties or disserve the public.

Price v. Paintsville Tourism Com'n, 261 S.W.3d 482, 484 (Ky. 2008) (citations omitted); *see also*

Maupin v. Stansbury, 575 S.W.2d 695, 699 (Ky. App. 1978).

In the present case, Plaintiff has failed to demonstrate the likelihood of irreparable harm in the absence of a temporary injunction. To satisfy this essential element, she must allege "possible abrogation of a concrete personal right." *Maupin*, 575 S.W.2d at 695. Here, however, the harm theorized by Plaintiff—namely, that deadlocks among the voting members of the Board cannot be resolved by the tie-breaking vote of the Secretary—remains speculative at this time. In addition, Plaintiff, as Secretary of State, retains her statutorily-granted title as chief elections officer of the Commonwealth of Kentucky. As such, she possesses authority to take all necessary and appropriate measures to administer the duties of her position, including resolving a deadlock. Any specific challenge to her actions can then be addressed in court. If such conflicts arise, a specific concrete injury can be alleged; however, at this time, any potential injury remains purely speculative. As a result, Plaintiff has failed to show that irreparable harm will result absent a temporary injunction. Having failed to demonstrate this essential element, Plaintiff's Motion for Temporary Injunction must be denied.

In addition, the Court finds it inappropriate to address injunctive relief until all proper parties are before the Court and all issues related to immunity have been resolved. At this time, the only defendants before the Court are two non-voting members of the Board and certain members of the legislature (e.g., the President of the Senate and Speaker of the House of

Representatives). At the May 13, 2019 hearing, counsel for the legislative defendants expressed an intent to assert an immunity defense and questioned the authority of the Court to enjoin these defendants from acting in their legislative capacities. This Court, in addressing similar arguments in other cases, has previously held that it is improper to sue legislators, or legislative leaders, for injunctive relief in connection with legislation that has been enacted by the General Assembly. *See, e.g. Beshear v. Bevin, Opinion and Order, 6/20/18* (Franklin Circuit Court No. 18-CI-379 and 414), *Adams v. Beshear, Order, 7/18/13* (Franklin Circuit Court No. 13-CI-00605). In addition, it is unclear whether all necessary parties are before the Court, and whether the appropriate public officials from the executive branch of government, who administer the legislation that is being challenged, are before the Court. The Court cannot issue advisory opinions, and any injunctive relief that is requested must be directed to the appropriate public officials who have jurisdiction over these issues, and who are entitled to notice and an opportunity to be heard prior to the granting of injunctive relief. These are valid concerns that should be addressed prior to issuance of any injunctive relief.

CONCLUSION

For the reasons set forth above, the Court hereby **DENIES** Plaintiff's Motion for Temporary Injunction.

SO ORDERED this 30th day of May, 2019.



PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

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